

**BEFORE THE COMMISSIONER OF SECURITIES AND INSURANCE
MONTANA STATE AUDITOR**

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IN THE MATTER OF:)	CASE NO.: INS-2012-241
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FRIEDEL, LLC, d/b/a FREEDOM)	FINAL AGENCY DECISION
BAIL BONDS,)	
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)	
Respondent.)	
)	

INTRODUCTION

The Commissioner of Securities and Insurance, Office of the Montana State Auditor (Commissioner), has reviewed the Hearing Examiner's February 2, 2015, Proposed Findings of Fact, Conclusions of Law, and Order (Proposed Order) in this matter (Exhibit A). The Proposed Order notified Respondent that it had 30 days to file exceptions to the Proposed Order and failure to respond within this time would constitute a waiver of its right to judicial review of this decision.

Friedel, LLC (Friedel) timely filed exceptions to the Proposed Order, and requested oral argument. The Office of the Montana State Auditor, Commissioner of Securities and Insurance (CSI), responded to Respondent's exceptions to the Hearing Examiner's Proposed Order.

The Commissioner issued an Order Regarding Oral Argument on March 17, 2015, setting the time, place, and order of the oral argument proceedings.

Oral Arguments were held on April 29, 2015. Friedel, appearing through the representation of William J. O'Connor, II, was given the opportunity to present its exceptions.

STANDARD OF REVIEW

In Reviewing the Hearing Examiner's Proposed Order after listening to the oral arguments, the Commissioner adheres to the Montana Administrative Procedure Act (MAPA) regarding contested cases. Mont. Code Ann. § 2-4-621. Specifically, § 2-4-621(3) provides:

The agency may adopt the proposal for decision as the agency's final order. The agency in its final order may reject or modify the conclusions of law and interpretation of administrative rules in the proposal for decision but may not reject or modify the findings of fact unless the agency first determines from a review of the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with the essential requirements of law. The agency may accept or reduce the recommended penalty in a proposal for decision but may not increase it without a review of the complete record.

As noted in *Ulrich v State ex rel Board of Funeral Serv.*, 1998 MT 196, ¶ 14, 289 Mont. 407, 961 P.2d 126:

When conducting a review of the Board's decision, we note that the Board, which did not personally hear or observe the evidence, does not have the authority to conduct a de novo review of the hearing examiner's decision. Rather, it may reject the examiner's findings only if they are not based upon competent, substantial evidence. Additionally, the Board must state with particularity that the findings are not based upon competent, substantial evidence ... [omitting partial quote of §2-4-621.]

A rejection of the hearing examiner's findings in violation of Mont. Code Ann. §2-4-621(3) constitutes an abuse of discretion pursuant to §2-4-704(2)(a)(vi). [omitting citation]

In interpreting MAPA, however, the Montana Supreme Court has held that a hearing examiner's findings of fact may be modified or rejected in other circumstances. See *In the Matter of the Grievance of Brady*, 1999 MT 153, 295 Mont. 75, 983 P.2d 292. The Commissioner may determine that certain of the Hearing Examiner's findings of fact are based on an interpretation of law and, therefore, such findings of fact may be rejected or modified like conclusions of law by the Commissioner. *Id.* at ¶ 14.

With regard to the Hearing Examiner's conclusions of law interpreting and applying the Montana Insurance Code, § 33-1-101 et seq., and Securities Act of Montana, § 30-10-101, et seq., and rules promulgated thereunder, the Commissioner may determine that the Hearing Examiner misinterpreted the law and may modify or reject the Hearing Examiner's proposed Conclusions of Law. *Id.* at ¶14; *Steer, Inc v. Department of Revenue* (1990), 245 Mont. 470, 474, 803 P.2d 601, 603. Further the Commissioner may accept or reduce the recommended penalty in the Hearing Examiner's proposed decision, but may not increase it without review of the complete record. § 2-4-621(3).

After due consideration of the entire record in this matter including, but not limited to, the transcript of the hearing held on October 28, 2014, and all exhibits entered into evidence, all pleadings, and the oral arguments held on April 29, 2015, on Respondent's exceptions to the Hearing Examiner's Proposed Order, the Commissioner finds good cause to enter the following:

ORDER


The Proposed Findings of Fact, Conclusions of Law and Order (collectively Exhibit A) are adopted as the Final Agency Decision in this matter and by this reference is made a part of

the Final Agency Decision except that paragraphs 1 and 2 of the Order will struck and replaced with paragraphs 1-3 below:

1. In accordance with § 33-1-317, Respondent is hereby fined \$1,250 for violating § 33-18-1003(1) by entering into agreements and issuing invoices referencing an unfair interest rate;
2. In accordance with § 33-1-317, Respondent is hereby fined \$1,250 for violating § 33-18-1003(1) by charging fees and costs of \$100 per hour without proper disclosure; and
3. In accordance with § 33-1-317, Respondent is hereby fined \$1,000 for its violation of § 33-17-236(1) by not being legally appointed by an insurer prior to transacting business on behalf of that insurer.

Respondent is hereby notified that it has the right to request judicial review of this Order by filing a petition for judicial review within 30 days after service of this Order with the district court in Lewis and Clark, County, Montana, as provided in § 2-4-702.

SO ORDERED this 13th day of July, 2015.



MONICA J. LINDEEN
Commissioner of Securities and Insurance,
Montana State Auditor

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was served on the 13th day of July, 2015, by to the following:

By Hand Delivery:

Michael Kakuk
Office of the Montana State Auditor,
Commissioner of Securities and Insurance
840 Helena Ave.
Helena, MT 59601

By Mail:

William J. O'Connor II
O'Connor & O'Connor P.C.
208 N. Broadway, Suite 412
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